No. 86-341

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

FORT HALIFAX PACKING COMPANY, INC.
Appellant

—v.—

MARVIN W. EWING, Director Bureau of Labor Standards, Department of Labor
Appellee

and

FORT HALIFAX PACKING COMPANY, INC.
Appellant

—v.—

RAYMOND BOURGOIN, *et al.*
Appellees

ON APPEAL FROM THE MAINE SUPREME JUDICIAL COURT

JURISDICTIONAL STATEMENT

JOHN C. YAVIS, JR.
(*Counsel of Record*)
THOMAS J. CLOHERTY
BARRY J. WATERS
THOMAS J. JOYCE
MURTHA, CULLINA, RICHTER and PINNEY
CityPlace—P.O. Box 3197
Hartford, Connecticut 06103-0197
Telephone (203) 240-6000
Appellant's Attorneys

Questions Presented

1. Whether The Employee Retirement Income Security Act Of 1974, 29 U.S.C. § 1001 *Et Seq.*, Which Explicitly Supersedes "Any And All State Laws Insofar As They May . . . Relate To Any Employee Benefit Plan", Preempts A State Statute Requiring An Employer To Establish An Employee Severence Pay Plan With Benefits Either Determined By Contract Or By That Statute.

2. Whether The National Labor Relations Act, 29 U.S.C. § 141 *Et Seq.*, Preempts A State Statute That Discriminates Against Unionized Employers i) By Compelling Them To Reach An Agreement On A Mandatory Subject Of Bargaining (Severance Pay) Or Incur Specified Liability And ii) By Allowing Nonunion Employers Unilaterally To Avoid The Specified Liability.

Parties to the Proceeding

The parties to the proceeding below were as follows:

Plaintiff-Appellees:

Director of Bureau of Labor Standards (State of Maine); Raymond Bourgoin; Clarence Hachey; Reginald Pooler; Audrey Tyler; Dorothy Dyer; Debbie LaMontagne; Lawrence Belanger; Raymond Caouette; Alice Gurney; Bertha Knowles; Eugene Bourgoin

Defendant-Appellant:

Fort Halifax Packing Company[1]

Amicus Curiae:

Chamber of Commerce of the United States of America; Maine Chamber of Commerce and Industry

[1]In accordance with Rule 28.1 of the Rules of this Court, Fort Halifax Packing Company, a Maine corporation, states that since June 24, 1986 it has been a wholly-owned subsidiary of Corbett Enterprises, Inc., a Delaware corporation with its executive offices in West Hartford, Connecticut ("Corbett Delaware"). Prior to June 24, 1986 Fort Halifax Packing Company was a wholly-owned subsidiary of Corbett Enterprises, Inc., a Missouri corporation ("Corbett Missouri"), whose executive offices were also in West Hartford, Connecticut. On June 24, 1986, in a statutory merger under the laws of Delaware and Missouri, Corbett Missouri was merged into Corbett Delaware, with the Delaware corporation as the surviving corporation. Corbett Poultry, Inc., a Delaware corporation, is also a wholly-owned subsidiary of Corbett Delaware.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

U.S. Constitution and Statutes:

Other Authority:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

FORT HALIFAX PACKING COMPANY, INC.

Appellant

—v.—

MARVIN W. EWING, Director Bureau of Labor Standards, Department of Labor

Appellee

and

FORT HALIFAX PACKING COMPANY, INC.

Appellant

—v.—

RAYMOND BOURGOIN, *et al.*

Appellees

JURISDICTIONAL STATEMENT

Appellant Fort Halifax Packing Company appeals from the final judgment of the Maine Supreme Judicial Court, dated June 2, 1986, holding that 26 M.R.S.A. § 625-B is not pre-empted by either the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* or the National Labor Relations Act, 29 U.S.C. § 141 *et seq.*

Opinions Below

The opinion of the Maine Supreme Judicial Court, entitled *Director of Bureau of Labor Standards, et al.* v. *Fort Halifax Packing Company*, which appears in Appendix A, is reported at 510 A.2d 1054 (Me. 1986). The opinions of the Maine

Superior Court after trial and granting partial summary judgment, appearing in Appendices B and C respectively, are not reported.

Jurisdiction

The Maine Supreme Judicial Court issued its decision on June 2, 1986. The appellant filed a Notice of Appeal with the Clerk of the Maine Supreme Judicial Court and simultaneously filed a copy with the Clerk of the Maine Superior Court, Kennebec County, on August 4, 1986 (Appendix D). This appeal is being docketed within 90 days from the entry of judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

Constitutional and Statutory Provisions Involved

Article VI, United States Constitution:

. . . the laws of the United States . . . shall be the supreme law of the Land . . .

Statutes:

Section 625-B, Title 26 of the Maine Revised Statutes Annotated and relevant portions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, and of the National Labor Relations Act, 29 U.S.C. § 141 *et seq.*, are reprinted in Appendix E.

Statement of the Case

From 1952 through 1981, Fort Halifax Packing Company ("Fort Halifax") and predecessor companies operated a poultry packaging and processing plant in Winslow, Maine. Corbett Enterprises, Inc., a multistate poultry producer, acquired all of the assets of Fort Halifax in 1972. Almost all of Fort Halifax's

approximately 125 employees were represented by Local 385 of the Amalgamated Meat Cutters & Butcher Workmen of North America. The union employees were covered by a series of collective bargaining agreements and, from 1972, participated in the "Corbett Enterprises, Inc. Retirement Plan For Production Employees." From 1972, administrative and clerical employees not covered by a collective bargaining agreement participated in the "Corbett Enterprises, Inc. Retirement Plan for Sales, Administrative and Clerical Employees." Both Corbett Enterprises plans uniformly covered employees in eleven states.

On May 21, 1981, because of adverse market conditions, Fort Halifax laid off most of its employees.[2] On October 30, 1981, eleven employees filed suit against Fort Halifax in Maine Superior Court seeking severance pay under 26 M.R.S.A. § 625-B (Appendix E). On November 2, 1981, the Director of the Bureau of Labor Standards of the Maine Department of Labor also commenced suit under 26 M.R.S.A. § 625-B. The latter action subsumed the individual plaintiffs' action. *See* 26 M.R.S.A. § 625-B(5).

Section 625-B requires certain employers that have shut down or relocated their operations to pay their former employees severance pay at the rate of one week's pay per year of employment unless: i) the relocation or termination resulted from natural calamity; ii) *the employee is covered by an express contract providing severance pay;* iii) the employer relocates its operations and the employee accepts employment at the relocation site; or, iv) the employee has been employed for less than three years.

Fort Halifax answered the complaints and asserted as defenses, *inter alia*, that the Maine statute was preempted by Section 514 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144, and the National Labor Rela-

[2]Pursuant to the Retirement Plans employees became eligible for immediate vesting and distribution of plan assets.

tions Act ("NLRA"), 29 U.S.C. § 141 *et seq.* *See* Appendix F at ¶ 24, A71 and ¶ 33, A77. The Maine Superior Court rejected Fort Halifax's federal preemption defenses and entered judgment against it. (*See* Appendix C at A36, A42; Appendix B at A23, A26.)

On appeal to the Maine Supreme Judicial Court, Fort Halifax argued, *inter alia*, that the Superior Court erred in holding that Section 625-B was not preempted by ERISA and the NLRA. In an opinion issued on June 2, 1986, the Supreme Judicial Court rejected these claims.

In considering Fort Halifax's claim that ERISA preempts the Maine severance pay statute, the Supreme Judicial Court expiicitly recognized that under Section 514(a) of ERISA any state law that "relates to" an employee benefit plan is preempted. *See* Appendix A at A6-A7. It also recognized that this Court has given the phrase "relate to" a "rather broad construction." *Id.* However, it held that ERISA did not preempt Section 625-B on the theory that the severance pay liability thereunder was a state-created fringe benefit. The Maine Supreme Judicial Court stated:

> In this case the severance pay liability created by Section 625-B is not a plan created by an employer or employee organization. Instead, it is a state created fringe benefit passed within the police power for the purpose of dealing with the economic dislocation that accompanies the shutdown of large establishments. Inasmuch as Section 625-B does not implicate a plan created by an employer or employee organization, it cannot be said to be preempted by ERISA.

Id. at A8.

The Supreme Judicial Court also rejected Fort Halifax's claim that Section 625-B interferes with the collective bargaining process and is preempted by the NLRA. The Court stated:

> Although Section 625-B does affect the collective bargaining relationship by encouraging employers to either agree to some form of severance pay contract or face liability under the act, it does not limit the rights of self-organization or forms of collective bargaining protected by the NLRA and is not preempted by the act.

Id. at A12.

Fort Halifax now appeals to this Court pursuant to 28 U.S.C. § 1257(2).

The Reasons For Granting Plenary Review

I. Introduction

ERISA Preemption. ERISA comprehensively regulates employee pension and welfare plans. An employee welfare plan includes

> any plan, fund, or program . . . maintained by an employer . . . for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) . . . benefits in the event of . . . unemployment . . . or (B) any benefit described in section [302(c) of the Labor Management Relations Act, 29 U.S.C. § 186(c)].

29 U.S.C. § 1002(1). Section 302(c)(6) of the LMRA refers to "pooled vacation, holiday, *severance*, or similar benefits." Therefore, severance pay plans are employee welfare benefit plans within the definition of 29 U.S.C. § 1002(1)(B). *Holland* v. *Burlington Industries*, 772 F.2d 1140, 1144 (4th Cir. 1985), *aff'd mem. sub nom. Brooks* v. *Burlington Industries, Inc.*, 54 U.S.L.W. 3836 (Sup. Ct. June 23, 1986); *Gilbert* v. *Burlington Industries, Inc.*, 765 F.2d 320, 326 (2d Cir. 1985), *aff'd mem.*, 54 U.S.L.W. 3836 (Sup. Ct. June 23, 1986).

By enacting ERISA, Congress "aimed to occupy fully the field of employee benefit plans and to establish it 'as exclusively a federal concern.'" *Gilbert*, 765 F.2d at 326 (*quoting Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). Congress' goal was to create uniformity in benefit laws and prevent inconsistent or conflicting state regulation of employee benefit plans. *See Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 98-99 (1983); *Holland*, 772 F.2d at 1147. To accomplish this goal Congress enacted Section 514 of ERISA, 29 U.S.C. § 1144, which preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan [covered by ERISA]." Section 514 has been referred to as the "'most sweeping federal preemption [provision] ever enacted by Congress.'" *Holland*, 772 F.2d at 1146 (citation omitted).

NLRA Preemption. The NLRA comprehensively regulates labor relations. With regard to collective bargaining the NLRA principally is concerned with establishing an equitable process for determining terms and conditions of employment.

As restated in *Metropolitan Life Insurance Co.* v. *Massachusetts*, 105 S. Ct. 2380, 2392-95 (1985), this Court has developed two analytical approaches to NLRA preemption. The first, drawn from *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959), provides that "state regulations and causes of action are presumptively pre-empted if they concern conduct that is actually or arguably either prohibited or protected by the [NLRA]." *Belknap, Inc.* v. *Hale*, 463 U.S. 491, 498 (1983). The second, drawn from *Lodge 76, International Association of Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), "proscribes state regulation and state-law causes of action concerning conduct that Congress intended to be unregulated, conduct that was to remain a part of the self-help remedies left to the combatants in labor disputes." *Belknap*, 463 U.S. at 499 (citations omitted).

State Interference. This case thus presents substantial questions concerning the authority of the states to legislate employee benefits within the comprehensive framework of federal ERISA and NLRA regulation. The Maine severance pay statute requires an employer to establish a type of employee benefit plan regulated by ERISA. If the holding of the Maine Supreme Judicial Court is affirmed, states will be free to require employers to maintain any employee benefit plan the state desires (including, for example, a pension plan) in lieu of liability established by the terms of an employee benefit statute. This result would completely undermine Congress' intent that employee benefits be exclusively a federal concern. The Maine statute also intrudes upon the collective bargaining process. If the holding in this case is affirmed, states will be free to augment a union's bargaining power on mandatory subjects of bargaining. This result would undermine Congress' intent to have the substantive terms of collective bargaining agreements result from the free play of economic forces.

II. ERISA preempts the Maine severance pay statute

Metropolitan Life Insurance Co. v. *Massachusetts*, 105 S. Ct. 2380 (1985), reaffirms the principle announced in *Shaw* and *Alessi* v. *Raybestos-Manhattan*, 451 U.S. 504 (1981), that Section 514 "was intended to displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." 105 S. Ct. at 2389. Severance pay falls within ERISA's sphere. *Holland*, 772 F.2d at 1145-46; *Gilbert*, 765 F.2d at 324-26. Accordingly, ERISA preempts any state law that "relates to" a severance pay plan. Under the test set forth in *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983), a law "relates to" a severance pay plan "if it has a connection with or reference to such a plan." *Id.* at 97.

The Maine severance pay statute requires that an employer have a severance pay plan. The statute provides the employer with the option of i) accepting the statutory terms and conditions of that plan or ii) selecting other terms and conditions.

However, either option results in the creation of a severance pay plan.

The Maine severance pay statute itself identifies the terms and conditions of the mandated plan. The statute: i) requires severance benefits to be paid; ii) creates former employees as the class of beneficiaries; iii) identifies the employer's general assets as the source of payment; and iv) specifies a procedure for collecting those benefits. This is all that ERISA requires of an employee benefit plan. *See Donovan* v. *Dillingham*, 688 F.2d 1367, 1373 (11th Cir. 1982) (en banc) (a plan exists under ERISA "if from the surrounding circumstances a reasonable person can ascertain the intended benefits, a class of beneficiaries, the source of financing, and procedures for receiving benefits"). *Accord Scott* v. *Gulf Oil Corp.*, 754 F.2d 1499, 1503-04 (9th Cir. 1985); *Molyneux* v. *Arthur Guinness & Sons*, 616 F. Supp. 240, 243 (S.D.N.Y. 1985); *Blue Cross & Blue Shield of Alabama* v. *Peacock's Apothecary, Inc.*, 567 F. Supp. 1258, 1267 (N.D. Ala. 1983). Since the very operation of 26 M.R.S.A. § 625-B requires an employer to establish a "plan", *a fortiori*, the statute has "connection with or reference to" an employee benefit plan and is preempted by ERISA. *See Shaw*, 463 U.S. at 96-97.

The Maine Supreme Judicial Court found no ERISA preemption "[b]ecause Maine's severance pay statute is operative only when a privately created employee benefit plan covering severance pay is not in existence." *See* Appendix A at A8. This conclusion presumes that there is no ERISA "plan" where employee benefits are mandated by state law. However, in *Standard Oil Co. of California* v. *Agsalud*, 633 F.2d 760 (9th Cir. 1980), *aff'd mem.*, 454 U.S. 801 (1981), this Court affirmed the Ninth Circuit's rejection of the same reasoning. There, plaintiff challenged a state law requiring employers to provide a comprehensive prepaid health care plan to their employees. The State of Hawaii argued that federal preemption did not apply because the term "employee benefit plan" in Section 3 of ERISA, 29 U.S.C. § 1002, did not encompass plans mandated by state law. The Ninth Circuit rejected this argument, stating:

> We cannot agree . . . with Hawaii's contention that Congress intended to exempt plans mandated by state statute from ERISA's coverage. . . . There is no express exemption from ERISA coverage for plans which state law requires private employers to provide their employees. . . . The plans envisioned under the Hawaii statute are therefore not rendered outside the definition of employee welfare benefit plans *simply because Hawaii has attempted to make them mandatory*.

633 F.2d at 764 (citations omitted) (emphasis supplied). Since the benefit package required by the Hawaii statute constituted a "plan" under ERISA, the Ninth Circuit held that the law "related to" an employee benefit plan and therefore was preempted.

Agsalud cannot be reconciled with the Maine Supreme Judicial Court's analysis, and it is *Agsalud* that finds support in the plain language of ERISA. Section 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3), exempts from ERISA's coverage a "plan . . . maintained solely for the purpose of complying with [i] applicable workmen's compensation laws or [ii] unemployment compensation [laws] or [iii] disability insurance laws." These are the only exemptions for state-mandated employee benefits. In an attempt to salvage the Maine statute, the Maine court posited a general exemption for all employee benefits distributed in accordance with a statutory formula rather than pursuant to a private contract. This construction is at odds with the broad definition of the term "plan". *See, e.g., Donovan, supra*. Moreover, if Congress had intended such a sweeping exemption, Section 4(b)(3)'s specific exemption for the three listed employee benefits would be superfluous. As it did in *Metropolitan*, this Court should reject a construction that would render ERISA

provisions "unnecessary" or "redundant". 105 S. Ct. at 2390. Instead, the Court may give effect to Section 4(b)(3) by holding, as in *Agsalud*, that the "plans envisioned under the [Maine] statute" are ERSIA employee benefit plans. 633 F.2d at 764.

III. The NLRA preempts the Maine severance pay statute

Severance pay is a mandatory subject of bargaining. *See NLRB* v. *Royal Plating & Polishing Co.*, 350 F.2d 191 (3d Cir. 1965); C. Morris, The Developing Labor Law 773-74 (2d ed. 1983). Accordingly, labor and management are bound to negotiate in good faith concerning severance pay issues. However, the NLRA provides that the bargaining "obligation does not compel either party to agree to a proposal." *See* Section 8(d), 29 U.S.C. § 158(d). In construing Section 8(d), this Court has stated time and again over several decades that Congress intended employers and unions to negotiate in a generally unregulated atmosphere. *See, e.g., Lodge 76, International Association of Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976); *H.K. Porter Co.* v. *NLRB*, 397 U.S. 99 (1970); *Local 24 of the International Brotherhood of Teamsters* v. *Oliver*, 358 U.S. 283 (1959). The Court has elaborated:

> [T]he fundamental premise on which the Act is based [is] private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract.

Porter, 397 U.S. at 108. *See Teamsters*, 358 U.S. at 296 (states may not limit "the solutions that the parties' agreement can provide to the problems of wages and working conditions"). *Accord Machinists*, 427 U.S. at 140, 148-51 (the parties' agreement should be controlled only by the "free play of economic forces").

Recently, this Court restated the NLRA limitation upon the States:

> "The States have no more authority than the Board to upset the balance that Congress has struck between labor and management in the collective-bargaining relationship. 'For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits.'"

Metropolitan, 105 S. Ct. at 2395 (citations omitted). *Metropolitan* involved a Massachusetts statute requiring *insurers* (not employers) to provide minimum mental health care benefits in general insurance policies. As noted by this Court, the *Metropolitan* appellants did not even suggest that the statute operated to alter "the balance of power between the parties to the labor contract." 105 S. Ct. at 2395. Rather, the appellants attempted to expand NLRA preemption principles by arguing that Congress

> intended to prevent the States from establishing minimum employment standards that labor and management would otherwise have been required to negotiate from their federally protected bargaining positions, and would otherwise have been permitted to set at a lower level than that mandated by state law.

Id. This Court disagreed, stating that the NLRA is concerned with the "equitable process for determining terms and conditions of employment." *Id.* at 2396. The substantive terms themselves do not implicate NLRA preemption "when the parties are negotiating from relatively equal positions." *Id.*

Stressing the lack of incompatibility between federal labor policy aimed at maintaining "the equality of bargaining power" and a state statute imposing "minimal substantive requirements,"

this Court upheld the Massachusetts statute. *Id.* at 2397. In doing so, the Court made clear that its holding rested upon two critical criteria:

> 1. That the "minimum standards" neither encouraged nor discouraged the collective bargaining process; and,
>
> 2. That the "minimum standards" affected union and nonunion employees equally.

The Maine severance pay statute does not meet either of these criteria.

The Maine statute intrudes upon the bargaining *process*. Unlike *Metropolitan*, here the statute provides the union with a bargaining chip because there is no minimum standard. Thus, the union can effectively leverage the employer by withholding agreement on a contractual severance pay provision unless the employer i) contracts for *more* than the statutory severance pay or ii) *concedes* some other negotiable benefit in return for a contract providing *less* than the statutory benefit. Moreover, in *Metropolitan*, this Court emphasized that employers could avoid the statutory liability altogether either by self-insuring or by not agreeing to provide insurance coverage. 105 S. Ct. at 2394. Here, employers do not have similar options. Consequently, the operation of the statute upsets the natural course of the collective bargaining process by augmenting the union's bargaining power.

The Maine statute also fails the second *Metropolitan* criterion by not "affect[ing] union and nonunion employees equally." Because it does not establish a minimum benefit standard, the statute promotes inequality. The statutory severance benefit of one week's pay per year of service does not apply if there is an express contract providing severance pay at any level. Thus, an employer not subject to collective bargaining may unilaterally institute a severance pay plan with whatever benefit level it wishes to provide (for example, one dollar for each year of

employment) and thereby avoid the statutory liability. Employers subject to collective bargaining, on the other hand, cannot similarly avoid the reach of the statute. In *Metropolitan*, this Court stated:

> It would further few of the purposes of the Act to allow unions and employers to bargain for terms of employment that state law forbids employers to establish unilaterally. "Such a rule of law would delegate to unions and unionized employers the power to exempt themselves from whatever state labor standards they disfavored." *Allis-Chalmers Corp.* v. *Lueck*, — US, at —, 85 L Ed 2d 206, 105 S Ct 1904 (slip op 9-10). It would turn the policy that animated the Wagner Act on its head to understand it to have penalized workers who had chosen to join a union by preventing them from benefiting from state labor regulations imposing minimal standards on nonunion employers.

Id. at 2398. Conversely, it does not further any purpose of the NLRA to require unionized employers to provide terms of employment that other employers may substantially avoid unilaterally. This penalizes workers who freely exercise their NLRA § 7 right not to join a union. 29 U.S.C. § 157 (employees "have the right to *refrain* from [union] activities") (emphasis supplied).

The Maine Supreme Judicial Court also incorrectly characterized the Maine statute as a valid exercise of the state police power. The statute is inconsistent with the purposes of the NLRA and does not provide economic protection to all citizens. *Cf. Metropolitan*, 105 S. Ct. at 2398-99 (a valid exercise of the police power found where the statute established generally-applicable minimum employment standards not inconsistent with the purposes of the NLRA).

There is an additional important distinction between *Metropolitan* and this case: *Metropolitan* involved insurance. By virtue of the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.*, and Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2), insurance is an area of employee benefits over which the states

have continued regulatory authority. There is no similar Congressional intent that states retain authority to regulate severance pay. To the contrary, severance pay is a matter of exclusive federal regulation. *Holland* v. *Burlington Industries* and *Gilbert* v. *Burlington Industries, supra.*

In sum, the Maine statute i) sets up a standard that non-union employers can avoid easily and that unions can bargain away if they extract a satisfactory *quid pro quo*, and ii) interferes in an area in which the states retain little, if any, regulatory authority. Therefore, the Maine court's reliance on *Metropolitan* here was erroneous. Rather, this Court's decisions in *Alessi, Machinists, Porter* and *Teamsters* dictate the conclusion that the NLRA preempts the Maine severance pay statute.

CONCLUSION

The Maine Supreme Judicial Court's decision that state-mandated employee benefits are not preempted by ERISA is in direct conflict with *Metropolitan, Agsalud* and the *Burlington* cases, which confirm that ERISA Section 514 displaces all state laws relating to employee benefit plans. If upheld, the Maine rationale would be authority for the States to circumvent ERISA not only with respect to severance pay but for all types of employee benefits. Further, the Maine severance pay statute intrudes upon the federally-protected collective bargaining process. The questions presented merit plenary consideration. Accordingly, we request that the Court note probable jurisdiction of this appeal.

JOHN C. YAVIS, JR.
THOMAS M. CLOHERTY
BARRY J. WATERS
THOMAS J. JOYCE

All of:
MURTHA, CULLINA, RICHTER and PINNEY
CityPlace—P.O. Box 3197
Hartford, Connecticut 06103-0197
Telephone: (203) 240-6000
Attorneys for Appellant